IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13564 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJENDRA SHYAMLAL THAKOR R/O DAMJIRAO DHARMSHALA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s)
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 31/08/2006

ORAL JUDGMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 13-03-06 by which the petitioner is detained as a Bootlegger

under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to five cases pending against the petitioner. These cases are registered against the petitioner under the provisions of the Bombay Prohibition Act for dealing in country liquor. It is alleged that the petitioner is habitually dealing in country liquor. The detaining authority has found that the activities of the petitioner are such that it will prejudicially affect public health and has, therefore, detained him under the provisions of the Act.

Learned advocate for the petitioner submitted that except these five cases, there is no other material to indicate that the activities of the petitioner is prejudicial to public health. It is also submitted by the learned advocate for the petitioner that there is no credible material to show that by dealing in the so called liquor, the petitioner has tried to harm public health. He further submitted that statement of not even a single witness has been recorded in the matter under section 9(2) of the PASA Act. He, therefore, submitted that it cannot be said that the petitioner has tried to disturb public order or even tempo of the Society. He further submitted that out of the 5 cases, in 3 cases there is report of the laboratory but in two cases, there is no report of any laboratory. He further submitted even there is nothing in the report to

indicate that the the article in which the petitioner is dealing is injurious to public health but on the contrary, the reports say that the article can be used for intoxication.

Learned advocate for the petitioner relied on the judgment of a co-ordinate Bench of this Court, [Coram: K.M. Mehta, J.] in the case of Niruben Ashokbhai Parmar vs. The State of Gujarat and others in SCA No. 22573 of 2005 wherein this Court has held as under in paragraphs 14 and 15 of the judgment:

> “14. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crime. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality.
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> 15. In view of the recent judgment of the Hon'ble Apex Court in the case of District Collector v. V.Laxmanna (supra), which the learned advocate for the petitioner cited and relied upon, in my view, detention order on the ground that detenu is indulging in manufacturing or transporting or selling of arrack-country liquor then that by itself would not become an activity prejudicial to the maintenance of public order but action under ordinary law namely prohibition law or

> other can be initiated. In view of the judgment of the Hon'ble Apex Court, the authority must alleged that the country liquor sold by the detenu is injurious to the public health and further that carrying on such activity is prejudicial to the maintenance of public order. The authority must show FSL report or report of chemical examiner which shows that the country liquor which has been manufactured is injurious to health and prejudicial to the public health and copy of such material should also be given to the detenu to afford him to make an effective representation."

In the instant case, considering the aforesaid judgment of the learned Single Judge, there is no credible material available on the record to indicate that by dealing in country liquor, public health is likely to the affected. There is no credible material from which it can be said that the activities of the petitioner is prejudicial to public health. At the most it can be said that the activities of the petitioner is in breach of law and order, and not public order. Even there is no statement of any witness under section 9(2) of the Act to indicate that there is likelihood of public order. The petition is required to be allowed as from the available records it cannot be said that the activities of the petitioner is against public health.

In the result, the petition is allowed. Order of

detention passed against the detenu dated 13.03.06 is quashed and set aside. The detenu is ordered to be released forthwith unless he is required in connection with any other offence.

Learned advocate for the detenu makes a voluntary statement that the detenu will not enter Baroda Police Commissionerate area upto 31st October 2006 except for attending the criminal case. This voluntary statement is recorded. It is for the learned Assistant Government Pleader to inform the concerned authorities about the voluntary statement and it is for the concerned authorities to monitor the same.

Rule made absolute accordingly. No order as to costs.

[P. B. MAJMUDAR, J.]

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